knowledge from his practical professional experience as would enable him to discharge the duties as a professional engineer effectively, the Board would register him.

I find that the Board has acted with complete fairness and that all the criticisms of the Board's conduct are without foundation.

This motion is dismissed with costs.

Motion dismissed.

Solicitors: *F.C. Pillai & Co.; L.A.J. Smith.*

KIAN CHIANG GRANITE QUARRY CO. PTE. LTD. v. ENG JOO LEE PTE. LTD.

[O.C.J. (Sinnathuray J.) March 19, 1982]
[Singapore — Suit No. 2928 of 1979]

Land Law — Lease for quarrying — Licence to defendants for duration of lease vide 1975 Agreement — Attempt by defendants to obtain renewal of 1975 Agreement to extend lease — Illegality of 1975 Agreement — Sand and Granite Quarries Act (Cap. 282), ss. 4(1), 5(6) & 20(2).

Sand and Granite Quarries — Licence required — Scope of Sand and Granite Quarries Act (Cap. 282), ss. 4, 5(6) & 20(2).

The plaintiffs had a lease of the land from the lessor, the President of the Republic of Singapore, to use and manage the land for the purposes of a granite quarry for a term of 10 years from September 1, 1969. Since the expiration of the lease on August 31, 1979, the plaintiffs had been allowed to continue granite quarrying operations on the land on a TOL on a month-to-month basis from September 1, 1979.

By an Agreement dated May 2, 1975 (the 1975 Agreement) the plaintiffs granted an exclusive licence to the defendants to use and manage the quarry from May 1, 1975 for the duration of the period of the lease granted to the plaintiffs by the Commissioner of Lands. Under clause 7, it was provided that "at the expiration of the present agreement and if the Commissioner of Lands offer a further lease" to the plaintiffs, then the defendants shall be given priority to continue with the existing arrangement subject to the other terms therein. On December 15, 1978 the defendants wrote to the plaintiffs offering renewal of the 1975 Agreement. The defendants in their said letter stated "the above terms are offered subject to the granting of the lease to you by the Commissioner of Lands and other competent authorities". On February 14, 1979, the plaintiffs replied refusing the defendants' offer to renew the 1975 Agreement. Subsequent negotiations between the parties ensued and several issues were raised: (1) whether the 1975 Agreement authorized the plaintiffs or the defendants to use or manage the land at Pulau Ubin for the purposes of a granite quarry (2) whether there was a contract concluded between the parties for the renewal of the 1975 Agreement.

Held: (1) on the facts, no contract was concluded between the parties for the renewal of the 1975 Agreement;

(2) the Sand and Granite Quarries Act (Cap. 282) provides that once a Licensing Officer has issued a licence in respect of a particular quarry, it is the licencee and the licensee alone who must manage, use and operate the quarry. The licensee must have exclusive possession of the quarry, and the licensee must exercise effective control over the persons working on the quarry;

(3) in the present case, the defendants were the ones who managed the land for the purposes of a granite quarry without a licence from the Licensing Officer authorising them so to do. It follows therefore that the 1975 Agreement was rendered unlawful under the Sand and Granite Quarries Act (Cap. 282);

(4) judgment would be given for the plaintiffs for the payment of the arrears due to the plaintiffs from the defendants under the 1975 Agreement; a declaration that the licence granted to the defendant by the 1975 Agreement expired on August 31, 1979 and that the plaintiffs were and had been since such date entitled to possession of the quarry; and for an injunction as claimed and costs;

(5) the defendants' counterclaim was dismissed.

CIVIL SUIT.

Gavin Anthony Lightman Q.C. (*P.T. Wong* with him) for the plaintiffs.

Philip Joseph Cox Q.C. (*Lee Mun Hooi* with him) for the defendants.

Cur. Adv. Vult.

Sinnathuray J.: This trial has taken 29 hearing days. It commenced on January 5, 1981 and was part-heard on two occasions. What appeared on the pleadings to be a case relating to the construction of certain documents has turned out to be a trial in which the evaluation of the oral evidence given at the hearing has become a matter of vital importance. The Notes of Evidence of the witnesses I have recorded exceed 350 typed foolscap pages. The submissions of counsel have taken over four hearing days. Mr. Gavin Lightman for the plaintiffs, and Mr. Philip Cox for the defendants have comprehensively covered the issues of facts and law that arise for decision. Having regard to the course of the proceedings I have described, I am of the view that it is in the interests of everyone that I should give a concise judgment now rather than reserve it and write *in extenso*.

The case relates to a granite quarry in Pulau Ubin. The plaintiffs have a lease of the land from the lessor, the President of the Republic of Singapore, to use and manage the land for the purposes of a granite quarry for a term of ten years from September 1, 1969. The rights and privileges of the President are at all times administered by the Commissioner of Lands. It is not in dispute that since the expiration of the lease on August 31, 1979, the plaintiffs have been allowed to continue granite quarrying operations on the land, until such time the land is required by the Government, on a Temporary Occupation Licence on a month-to-month basis from September 1, 1979.

By an Agreement in writing dated May 2, 1975 (the 1975 Agreement), the plaintiffs granted an exclusive licence to the defendants to use and manage the quarry from May 1, 1975 for the duration of the period of the lease granted to the plaintiffs by the Commissioner of Lands. Under Clause 7 it is provided that "At the expiration of the present agreement and if the Commissioner of Lands offer a further lease" to the plaintiffs, then the defendants "shall be given priority to continue with the existing arrangement" subject to the other terms therein. It is common ground that in law the 1975 Agreement created a licence coupled with an interest in the land.

On December 15, 1978 the defendants' managing director, Mr. Lim Kim Hong (Lim) wrote to the manager of the plaintiffs that the 1975 Agreement will be expiring on August 31, 1979 and offered "our main terms for the renewal of the Agreement". In the penultimate paragraph of his letter, Mr. Lim said:

"The above terms are offered subject to the granting of the Lease to you by the Commissioner of Lands and other Competent Authorities."

On February 14, 1979, Mr. Yeoh Sze Hong (Yeoh), the manager of the plaintiffs, referred to Mr. Lim's letter and said: "I regret to inform you that the Board of Directors do not accept your offer".

On May 11, 1979, the solicitors for the plaintiffs made a counter offer to the defendants. The solicitors pointed out in their letter that the terms offered were "subject to the renewal of the Lease by the Commissioner of Lands...". The defendants did not respond to this counter offer.

A meeting was arranged to discuss the renewal of the 1975 Agreement. It was held on July 10, 1979 on the 24th Floor of Hong Leong Building. The primary issue in this case is whether at that meeting an oral agreement was concluded between the plaintiffs and the defendants. On the state of the pleadings the burden of proof of the existence of the oral agreement was on the defendants.

Mr. Lim gave evidence that he was the sole representative of the defendants at the meeting. Though Mr. Richard Goh, the marketing manager of the defendants, was called to prove that he did not attend the meeting, his evidence is of no assistance to me. Not only has he a poor memory and is an unreliable witness, but for reasons best known to him (perhaps he thought it would demonstrate that he was an unbiased witness) he gave evidence of uncalled for untruths.

On the plaintiffs' side, three of the four persons who represented the plaintiffs at the meeting gave evidence at the trial. They were Mr. Chng Gim Huat (Chng), a director who *de facto* was the managing director of the plaintiffs, Mr. Kwek Hong Lye (Kwek), chairman of the plaintiffs, and Mr. Yeoh, the manager of the plaintiffs. There is no reason for me to doubt their evidence that Mr. Richard Goh was at the meeting with Mr. Lim.

The evidence of what took place at the meeting is fresh in my mind. From the evidence-in-chief of Mr. Lim, it is to be inferred that it was a short meeting. He said that after the discussion on the fluctuation of prices of granite between him and Mr. Chng, there was a brief conversation between Mr. Chng and Mr. Kwek, there was a nod from Mr. Kwek, and then Mr. Chng announced that the 1975 Agreement would be extended for a further period of five years with the exclusion of one clause in the Agreement. But when I consider the evidence of Mr. Lim in cross-examination, I find that it was a fairly long meeting at which many topics were discussed. The examination of the whole of his evidence supports the submission of Mr. Lightman that there are many unsatisfactory features in the evidence of Mr. Lim, like his inability to recall when he ought to, changes in his evidence after adjournments, outstanding contradictions and there are other disturbing elements in his evidence. One example will suffice. There is the crucial matter of whether the renewal of the lease by the Commissioner of Lands was mentioned at the meeting. As regards it, it is on record in the opening address of Mr. Cox that there was no discussion of the lease at the meeting. At one point in the evidence of Mr. Lim there is his negative answer. On another occasion he said it was mentioned at the beginning of the meeting. Yet on another occasion, he said it was at the end of the meeting. Finally, there are his responses that he was told of the renewal before the meeting.

In contrast to the evidence given by Mr. Lim, the evidence for the plaintiffs of what took place at the meeting is more complete and vivid. One gets a clear picture of that business meeting, of the negotiations that took place between Mr. Lim and Mr. Chng consequent upon the failure of the parties to agree to a renewal of the 1975 Agreement through the exchange of letters. Put shortly, the evidence for the plaintiffs is that the parties did not come to any agreement at the meeting because they could not agree on the terms for the renewal of it. It is common ground that the meeting ended with Mr. Lim being told to go back and write a letter.

A finding of importance I have to make is whether there was any mention at the meeting on July 10, 1979 on the subject of the grant of a lease by the Commissioner of Lands. It is the plaintiffs' case that Mr. Lim was told at the meeting that any agreement on the terms for the renewal of the 1975 Agreement was conditional to the Commissioner of Lands giving a new lease to the plaintiffs. Mr. Lim's case however is that at that meeting he was clearly told that the lease had been renewed. I find as a fact that the plaintiffs' case is the true account. The matter is put beyond doubt in the letter of Mr. Lim written two days after the meeting, on July 12, 1979. I am not concerned here with the body of the letter in which I find Mr. Lim sets out *his understanding* (italicized for emphasis) of the discussions had at the meeting. In the context of the matter I am dealing with, it is the statement of Mr. Lim in the last sentence of his letter that is crucial. It corroborates the oral evidence given for the plaintiffs and refutes the defendants' version of the discussions had at the meeting. The last sentence of Mr. Lim's letter reads as follows:

"However, it is noted that the extension of the Agreement herein mentioned shall be *subject to your obtaining the renewal of the Quarry Licence from the Commissioner of Lands and other Competent Authority.*"

On the phrase "Quarry Licence" in the above sentence, there is the evidence of the wife of Mr. Lim that she had typed the letter, that the letter was dictated to her in Mandarin by her husband, and that the words "Quarry Licence" was spoken by him to her in English. I need not dwell on her evidence. It is clear from a reading of her evidence that, as was submitted by Mr. Lightman, she was a dutiful wife who gave evidence to serve the interests of her husband.

Mrs. Lim was called to buttress the evidence of Mr. Lim that at the meeting of July 10, 1979 there was a discussion not on the grant of a lease by the Commissioner of Lands but on the issue of a licence for the quarry by the Public Works Department, and that is why Mr. Lim had referred in his letter to the "Quarry Licence". I do not want to go into the topic relating to the issue of licence by the Public

Works Department canvassed at the hearing. Mr. Lightman has dealt with it fully and I accept his submissions thereon. As for the phrase "Quarry Licence" in the letter, I am satisfied that by making reference to the Commissioner of Lands Mr. Lim, as he had done in his letter of December 15, 1978, was referring to the "quarry lease" because the interest of the Commissioner of Lands is in the lease and not in the issue of licence by the Public Works Department. I am also satisfied that Mr. Lim knew very well that the issue of licence by the Public Works Department has got nothing to do with the Commissioner of Lands.

So then, on the findings I have made on the evidence of the witnesses who testified before me, I am satisfied that on the discussions had at the meeting on July 10, 1979, the evidence for the plaintiffs is to be altogether preferred to the evidence given for the defendants. I find as a fact that no contract was concluded at this meeting for the renewal of the 1975 Agreement.

Next, there is a legal issue equally central to the case. It is the issue of illegality. For the plaintiffs, it is contended that the 1975 Agreement (and the alleged renewal of it) is rendered unlawful by the Sand and Granite Quarries Act (Cap. 282) (the Act). The solicitors for the defendants too, in the exchange of correspondence with the plaintiffs' solicitors before action, had formed the same view. It is now urged upon me for the defendants that there is nothing in the Agreement that makes it illegal under the Act.

On the policy and object of the Act, I accept the submissions of Mr. Cox that the Act regulates and controls the operation of granite quarrying which is potentially dangerous and liable to cause a nuisance to the environment; that it effectively controls the working conditions within the quarry and safeguards all persons working or present in or about the quarry; and that it provides effective control of the quarrying operations so as to safeguard the rights of adjoining occupiers and any other persons who may be adversely affected thereby.

The objects are achieved in the following provisions of the Act —

(a) Section 4(1):

"No person shall, on or after the date of the coming into operation of this Act, use or manage any land for the purposes of a sand or granite quarry without a licence from the Licensing Officer authorising him so to do."

(b) Section 5(6):

"No such licence shall be transferable without the consent of the Licensing Officer."

(c) Section 20(2):

"Every person who appears to be employed in any sand or granite quarry licensed under this Act shall, for the purposes of this section, be deemed to be a servant of the licensee thereof."

The cumulative effect of these provisions is that once a Licensing Officer has issued a licence in respect of a particular quarry, it is the licensee and the licensee alone who must manage, use and operate the quarry. It goes without saying that the licensee would have to employ persons to work on the quarry. The licensee may even employ independent contractors. But to carry out the avowed objects of the Act, the licensee must have exclusive possession of the quarry, and the licensee must exercise effective control over the persons working on the quarry.

The question that I have to consider is this. Looking at the 1975 Agreement, does the Agreement authorise the plaintiffs or the defendants to use or manage the land at Pulau Ubin for the purposes of a granite quarry? To answer the question, I turn to the Agreement.

(1) The second recital refers to "the licence and liberty" of the defendants to work on the quarry.

(2) Clause 2 provides that the plaintiffs "shall hand over the Quarry and the Granite yard as it is" to the defendants.

(3) Clause 4 stipulates that the defendants shall work on the quarry.

(4) Clause 10 requires the defendants to employ "all the existing labourers employed" by the plaintiffs.

(5) Clause 13 passes to the defendants the responsibility to comply with the Act and other statutory provisions relating to quarries.

(6) Clause 20 puts the defendants into possession of the quarry.

It is clear from a consideration of these clauses that the defendants have exclusive possession of the quarry, they have a licence coupled with an interest in the land. They also have the right to quarry as they think fit on their own account without any limitation subject only to their obligation to comply with the Act and of the other statutory provisions relating to granite quarries. In my judgment, it is the defendants who are using or managing the land for the purposes of a granite quarry without a licence from the Licensing Officer authorising them so to do. It follows therefore that the 1975 Agreement is rendered unlawful under the Act. Accordingly, as conceded by Mr. Lightman, the plaintiffs' claim to purchase the machinery pursuant to Clause 19 of the 1975 Agreement is unenforceable.

Finally, I want to say something on the defence mounted for the defendants. Their case is, on the footing that there was an oral agreement concluded between the parties on July 10, 1979, the plaintiffs had by the end of August 1979 reneged it. They say that the plaintiffs went back on the oral agreement because the plaintiffs had given a licence to another company, Island Concrete (Pte.) Ltd. on terms more advantageous to the plaintiffs than under the oral agreement they had with the defendants. This, they say, was unjust and inequitable to them. Island Concrete, like the plaintiffs, is under the control of the Hong Leong Group.

To make out the defence, the defendants called Mr. Tan Hee Chee (Tan), the manager of Island Concrete, as part of the defendants' case. He said the plaintiffs approached Island Concrete after their negotiations with the defendants to renew the 1975 Agreement had broken down. He maintained that Island Concrete had entered into a sub-contract with the plaintiffs to operate the quarry in Pulau Ubin. In

support of his claim, he produced certain documents. There is no need to refer to them here. When Mr. Chng gave evidence for the plaintiffs, he was cross-examined at length by Mr. Cox, both on the documents that had been produced by Mr. Tan and on the claim of the plaintiffs that they had a sub-contract with Island Concrete. Mr. Lightman has submitted that all these are irrelevant matters. I cannot agree with him. The cross-examination of Mr. Chng was relevant to credit, and the facts that have emerged in the cross-examination would have been material to the defence had the alleged oral agreement of July 10, 1979 been proved by the defendants.

Now, on the evidence before me, I am satisfied that the documents produced by Mr. Tan do not show the true nature of the relationship between Island Concrete and the plaintiffs. In this context, I accept the evidence of Mr. K.S. Chung and Mr. Tan Geok Ser who said that as the solicitors for the plaintiffs they were told by the representatives of the plaintiffs when they were given instructions in this case that the plaintiffs had entered into a sub-contract with Island Concrete. But the solicitors were not told or shown the documents which Mr. Tan produced in court. Included in the documents are contracts alleged to have been made between the plaintiffs and Island Concrete without the benefit of legal advice.

On a review of the whole of the evidence on this subject, the conclusion I come to is that the arrangement the plaintiffs have with Island Concrete is similar in nature to the terms in the 1975 Agreement the plaintiffs had with the defendants. The plaintiffs have given Island Concrete a licence coupled with an interest in the land in Pulau Ubin to use and manage the land for the purposes of a granite quarry. Like the 1975 Agreement, the arrangement the plaintiffs have with Island Concrete is illegal under the Act. It is also in breach of the Temporary Occupation Licence given to the plaintiffs by the Commissioner of Lands.

I now come back to the claim of the plaintiffs. For the reasons I have given, there will be judgment for the plaintiffs (a) for the payment of the arrears due to the plaintiffs from the defendants under the 1975 Agreement; (b) a declaration that the licence granted to the defendants by the 1975 Agreement expired on August 31, 1979 and that the plaintiffs are and have been since such date entitled to possession of the quarry; (c) an injunction as claimed in the statement of claim; and (d) costs. The counterclaim of the defendants is dismissed with costs.

Claim allowed.

Counterclaim dismissed.

Solicitors: *P.T. Wong & Co.; Lee Bon Leong & Co.*

MALAYSIAN REPORTS

GOVINDJI & CO v. SOON HIN HUAT

[F.C. (Raja Azlan Shah C.J., Abdul Hamid F.J. & Abdoolcader J. November 18 & December 2, 1981]

[Penang — Federal Court Civil Appeal No. 63 of 1981]

Contract — Illegality — Contract for sale of copra — Buyer not licensed — Coconut Marketing Scheme, 1973, para. 4(1)(a) — Federal Agricultural Marketing Authority Act, 1965, s. 5.

The appellants had entered into three contracts with the respondents for the sale of copra. Copra was delivered under the first contract, but there was an overpayment of the sum of $10,597.60. No copra was delivered in respect of the second and third contracts. The appellants brought an action against the respondents claiming the sum of $10,597.60 for money had and received and also damages for loss in respect of the second and third contracts. Arulanandom J. entered judgment for the appellants for money had and received but dismissed the rest of the claim. The appellants appealed.

Held, dismissing the appeal: as the appellants did not have a licence to purchase copra, the contracts entered into were clearly in contravention of the law such that the consideration was unlawful and therefore void.

Cases referred to:

(1) *Anglo-American Corp. Ltd.* v. *Singapore Produce Co.* [1962] M.L.J. 399.

(2) *In re Anglo-Russian Merchant Traders and John Batt & Co. (London)* [1917] 2 K.B. 679.

HIGH COURT.

S. Thillaimuthu for the plaintiffs.

T.R. Hepworth for the defendants.

Cur. Adv. Vult.

Arulanandom J.: This was a claim by the plaintiffs for damages, the sum of $10,592.60 as money had and received, interest and costs against the defendants who it was alleged had failed to perform certain contracts of sale of non-black fully dry copra in hemispheric form and without pieces. According to the plaintiffs by the first contract in writing No. 1156 dated May 25, 1973 the defendants sold and agreed to deliver 504 pikuls of the said copra at the price of $44 a pikul at Weld Quay on or before August 31 but only delivered a total of 348 pikuls between September 1973 and April 1974 leaving a balance of 155.40 pikuls undelivered. Again by Contract No. 1157 dated June 25, 1973 the defendants sold and agreed to deliver 420 pikuls of the said copra at $47.75 per pikul at the same place before October 31, 1973 but no copra was delivered. Again by Contract No. 1158 dated July 28, 1973, the defendants sold and agreed to deliver 420 pikuls of the copra at $56 per pikul at the same place before December 31, 1973 but no copra was delivered. In the process the plaintiffs had overpaid the defendants by the sum of $2,597.60 on Contract No. 1156, and made advance payments of $3,000 on Contract No. 1157 and $5,000 on Contract No. 1158, thus leaving the amount of $10,597.60 in the hands of the defendants as money had and received. The damages the plaintiffs were claiming was the difference between the market price and the contract price of the said copra at the relevant dates which according to the plaintiffs' claim amounted to $59,081.

There is no dispute between the parties as regards payment and non-delivery of the said copra on the